



**THE ATTORNEY GENERAL
OF TEXAS**

Grover Sellers

XXXXXXXXXXXXXXXXXXXXX
JOHN BEN SHEPPERD
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Sidney Latham
Secretary of State
Austin, Texas

Attention: Horace B. Sessions

Dear Sir:

Opinion No. 0-6316

Re: Functions of the Administrator
of the Securities Division of of-
fice Secretary of State with
reference to applications for
real estate dealer's or sales-
man's licenses.

We are in receipt of your letter of recent date requesting the
opinion of this department on the above stated matter. Your letter, in
part, reads as follows:

"We have recently been presented with the question
as to whether or not the Administrator of the Securities
Division is authorized or required to investigate each
applicant for a Real Estate License to determine such
applicant's competency. It has been the policy of this
Department in compliance with Section 9 of the Act to
issue licenses upon the filing of a sworn application
accompanied by three affidavits of recommendation,
unless information as contained in the face of the appli-
cation or in our files relating to the question of the ap-
plicant's good business repute and business practices
necessitates an investigation before acting to grant or
refuse the license.

"We should appreciate an opinion from your office
on the question of whether or not the Administrator of
the Securities Division is authorized or required under
the provisions of either Section 8 or Section 9 to make
an investigation of each applicant's competency upon
the filing of an application in this office, and make a

finding that the applicant is competent to carry on business as a Real Estate Dealer or Salesman before granting such applicant a Real Estate License.

"Should it be your opinion that the Administrator is authorized or required to make an investigation as to each applicant's competency before acting on his application, we should appreciate being advised as to what standard or yard stick may be used by the Administrator under the authority of the Act to determine competency in passing upon applications for Real Estate Dealers License."

Under the provisions of the Real Estate Dealer's Act (Article 6573a, V.A.C.S.), it is contemplated that the public interest will be served by the issuance of real estate dealer's or real estate salesman's licenses to only those applicants who are of good business repute and will conduct their business in an honest, fair, just and equitable manner. For the purpose of achieving that objective, the Legislature has prescribed in Sec. 6, Article 6573a, that the applicant shall file his application for said license with the Administrator of the Securities Division of the office of the Secretary of State, and that certain minimum information and proof shall be included in said application. Section 7 of said Article prescribes the residence requirements as well as certain eligibility requirements applicable to non-resident applicants. Sec. 8, Article 6573a, provides:

"Application for a real estate dealer's or real estate salesman's license shall contain such other information as to the applicant, in addition to the above described, as the Administrator of the Securities Division of the office of the Secretary of State shall require. The Administrator of the Securities Division of the office of the Secretary of State may require such other proof through the application or otherwise as its officers shall deem desirable with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity, and competency of the applicant."

Sec. 9a, Article 6573a, provides:

"If the Administrator of the Securities Division of the office of the Secretary of State is satisfied that the applicant for real estate dealer's or real estate salesman's license is of good business repute and that the business will be conducted in an honest, fair, just, and equitable

manner, and upon complying with all other provisions of law and conditions of this Act, a license shall thereupon be granted by the Administrator of the Securities Division of the office of the Secretary of State to the successful applicant therefor as a real estate dealer or real estate salesman, and the applicant, upon receiving possession of license, is authorized to conduct the business of a real estate dealer or real estate salesman in this State."

In *Reagan v. Guardian Life Insurance Co.*, 166 S. W. (2d) 909, the Texas Supreme Court held that under a statute (Sec. 1, Art. 5068b) authorizing the Board of Insurance Commissioners to determine whether licenses should be granted to life insurance agents, the power to make such determination carried with it the power to make investigations. In Sec. 1, Art. 5068b, we find the following language:

"Hereafter whenever any person shall desire to become an agent for a life insurance company, . . . , he shall, in such form and giving such information as may be required, make application to the Board of Insurance Commissioners for a license to act as such agent. After the Board of Insurance Commissioners shall determine that such person is of good character and reputation, it shall issue the license to such person"

With reference to the authority of the Board of Insurance Commissioners, under the foregoing section, the Court said:

"Section 1 of Article 5068b, Vernon's Civil Statutes, provides for the licensing, among others, of life insurance agents. The licenses are issued by the Board of Insurance Commissioners, and the statutes clothe the Board with power to determine if the applicant for license is of good character and reputation. Of course, the very power to make such determination carries with it the power to make all necessary investigation." (Emphasis ours)

It is our opinion that the purpose and meaning of Sections 8 and 9, Article 6573a, which confer authority upon the Administrator of the Securities Division of the office of the Secretary of State with respect to the determination of the fitness of an applicant for a real estate dealer's or salesman's license is similar in meaning and purpose to Section 1, Article 5068b, which confers authority upon the Board of Insurance Commissioners with respect to the determination of an applicant's fitness for

a life insurance agent's license. In each instance, wide discretion is given to the respective officers in the matter of determining whether a license shall be issued, and the power to make such determination carries with it the power to conduct investigations. (Reagan v. Guardian Life Ins. Co., Supra).

In view of the foregoing, it is our opinion that the Administrator of the Securities Division of the office of the Secretary of State is authorized to make such investigation, if he deems it desirable, "with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity, and competency of the applicant." However, we find no provision in Article 6573a requiring the Administrator to conduct such an investigation.

With reference to the standard or "yard stick" which may be used by the Administrator to determine competency in passing upon applications for real estate dealer's or salesman's licenses, we quote the following language of Sec. 9a, Article 6573a: "If the Administrator of the Securities Division of the office of the Secretary of State is satisfied that the applicant for real estate dealer's or real estate salesman's license is of good business repute and that the business will be conducted in an honest, fair, just and equitable manner . . . a license shall thereupon be granted by the Administrator of the Securities Division of the office of Secretary of State to the successful applicant therefor . . ." The Administrator is to satisfy himself from all the information and proof required in the application, or otherwise, as to whether the applicant is "of good business repute and that the business will be conducted in an honest, fair, just and equitable manner."

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

JAE:ddt-rn

By s/ J. A. Ellis
J. A. Ellis
Assistant

APPROVED DEC. 15, 1944
s/Grover Sellers
ATTORNEY GENERAL OF TEXAS

APPROVED Opinion Committee
By G.W.B., Chairman